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CHARLES ELMORE CROPLEY
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

Moot

No. 195

BLANCHE A. HOWARD,

Petitioner,

vs.

UNITED STATES OF AMERICA

ON PETITIONER'S APPLICATION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY TO THE SOLICITOR GENERAL'S MEMORANDUM SUGGESTING THAT THE ABOVE ENTITLED CAUSE HAS BECOME MOOT.

Roy St. Lewis,
Ira B. McLaughlin,
Counsel for Petitioner.

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Petitioner respectfully suggests to this Honorable Court that the unseasonable memorandum of the Solicitor General suggesting denial of a writ of certiorari because the matter has become moot overlooks one essential and overwhelming factor. That is, would the denial of a writ of certiorari, on the part of this Honorable Court, extend to the citizen-witness in this case, or other citizen-witnesses similarly situated now or in future that dispensation of justice and protection from zealous prosecutors afforded under the decision of the *Michaels* case?

In the instant case we are confronted with a divided opinion by the Eighth Circuit Court of Appeals, the majority holding that the District Court's order would "have to be enforced promptly" "to serve any useful purpose," and that petitioner "surrender herself forthwith to the United States Marshal" (R. 152-53); and, the dissenting opinion holding in effect that the action of the majority in so ruling was contrary to the decision of this Court in the *Michaels* case, clearly evasive of the letter and spirit of the Michaels decision. And, petitioner further respectfully points out that on July 7th, 1950, the further enforcement of the District Court's order was stayed by order of Mr. Justice Black, conditioned upon the posting of a bond and upon the filing by July 16th, 1950, of a petition for a writ of certiorari to review the judgment of the Court of Appeals (see Pet. 5); which petition for a writ of certiorari was filed before July 16, 1950.

Petitioner respectfully submits that Mr. Justice Black was cognizant of the impending expiration of the Grand Jury on September 12th, 1950, and was aware too, of one controlling circumstance, viz., that the citizen-witness in this case faced a lengthy period of confinement in the custody of the United States Marshal upon a set of circumstances and conditions frowned upon and denounced in the *Michaels* case. Mr. Justice Black proceeded to grant the petitioner relief from such uncalled-for imprisonment by granting bond, and at one and the same time *ordered the filing of a petition for a writ of certiorari to review the judgment of the Court of Appeals.* Can it be reasonably held that Mr. Justice Black imposed a requirement upon the petitioner that would result in no clear-cut ruling merely because the Grand Jury expired on September 12, 1950? We think not.

Petitioner respectfully submits that unless a writ of certiorari is granted in the instant case, and the decision of the

Court of Appeals for the Eighth Circuit reversed, great harm may befall other citizen-witnesses who might become ensnared through the actions of zealous prosecutors *bent on ignoring the* Michaels *case decision of this Honorable Court* and following the majority decision of the Court of Appeals for the Eighth Circuit.

Petitioner respectfully submits adherence to mere form or rule, as suggested by the Solicitor General in his unseasonable memorandum, should be disregarded in the instant case, and that the petition for a writ of certiorari be granted to the end that the majority decision of the Court of Appeals for the Eighth Circuit be reversed, thereby reasserting the principles laid down in the *Michaels* case.

Or, in the alternative, should this Honorable Court be disposed to follow the rule that certiorari is deniable where a cause has become moot, petitioner respectfully prays that this Honorable Court make note in its *per curiam* opinion denying certiorari that the majority decision of the Court of Appeals for the Eighth Circuit in the instant case *runs counter to the* Michaels *case decision and stands disapproved.* Thus, the citizen-witness in this case, and other citizen-witnesses similarly situated now, or in future, will be afforded the protection this Honorable Court laid down in its decision in the *Michaels* case.

And your petitioner will ever so pray.

Respectfully submitted,

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Washington, D. C.;
Ira B. McLaughlin,
Kansas City, Missouri,
Counsel for the Petitioner.